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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,717	01/02/2001	Cecile Bebot	05725.0826-00	1012

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EXAMINER

KOSS, ANN MARIE

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 04/05/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/750,717

Applicant(s)

BETBOT, CECILE

Examiner

Ann-Marie Koss

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE $\frac{1}{2}$ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-91 is/are pending in the application.
- 4a) Of the above claim(s) 55-66 and 70-91 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 17-20, 26, 29-39, 41-54 and 67-69 is/are rejected.
- 7) ☒ Claim(s) 15, 16, 21-25, 27, 28 and 40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. The applicant's amendment filed on March 8, 2002 in response for the Office Action dated February 11, 2002 has been entered and the remarks have been considered. Applicant has elected with traverse, Group I, claims 1-54 and 67-69, which is drawn to a composition for the oxidative dyeing of keratin fibers.
2. Applicant's election with traverse of composition for the oxidative dyeing of keratin fibers in Paper No. 6 is acknowledged. The traversal is on the ground(s) that the Examiner has not shown that there would be a serious burden to examine Groups I, II, III, IV, VI and VII, despite the statement that the inventions are distinct. This is not found persuasive because each of Groups I, II, III, IV, VI and VII have a separate classification and therefore have attained recognition in the art as a separate subject for inventive effort, and also a separate field of search. Hence, there would be a serious burden to examine all Groups. There is traversal also on the ground(s) that the method claims are drawn to the method of using a composition, not methods of making a product. The Examiner acknowledges that in the instant case, the processes as claimed could be used in another materially different process such as one to dye and condition textiles. Therefore, the requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-14, 17-20, 26, 29-39, 41-54, and 67-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grollier et al. (U.S. Patent No. 5,009,880).

Grollier et al. teaches a cosmetic hair composition that can contain known hair dye components for oxidation dyeing of hair as well as a cyclohomopolymer of dialkylallylammonium and quaternary polyammonium polymers, (see Abstract, col. 4 line 4-7, col. 5 line 23-col. 6 line 10, col. 8 line 54-68, col. 9 line 59-col. 10 line 66 and col. 12 line 32-col. 14 line 28). Grollier et al. further teaches a composition that contains cationic polymers, on their own or in combination with other polymers of the type, present in an amount of 0.01 to 10% by weight relative to the total weight of the composition (see col. line 34-38); reducing agents such as sulphites and thioglycollates (see col. 55 line 5-10); surface agents in an amount up to 10% by weight (see col. 52, line 64-66 and col. 54 line 15-17); thickeners in an amount from 0.5 to 30% by weight (see col. 54 line 38-53); an oxidation dye, a coupling substance, an oxidizing agent, and an oxidation base and their salts (see col. 52 line 27- 63); contains fatty alcohols comprising 12 to 18 carbon atoms in a quantity of 0.5 to 25% weight relative to the total weight of the composition (see col. 51 line 35-43); an anionic, cationic, amphoteric or nonionic polymer (see col. 46 line 18-20); has a pH of 9 to 11 (see col. 52 line 17-25); and a method of using the composition, (see col. 59 lines 30-35 and Examples).

Grollier et al. does not teach combining cyclohomopolymer of dialkylallylammonium and quaternary polyammonium polymers as claimed.

The prior art does, however, teach combining quaternary polyureylene polymers with other cationic polymers, (see col. 31 line 16-20) and further suggests the combination of more than one cationic polymer because it is written in open language, (see col. 46 line 32-36 and col. 50 line 34-38).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine a cationic cyclohomopolymer of dialkylallylammonium polyammonium with a cationic quaternary polyammonium polymer in a composition for the

oxidation dyeing of keratin fibers as claimed. Such a modification would be obvious because one would expect that the use of a cationic cyclohomopolymer of dialkylallylammonium polyammonium with a cationic quaternary polyammonium polymer would be similarly applicable and have the same conditioning effect when applied in the composition for conditioning and dyeing as taught by Grollier et al. Furthermore, the prior art has made the suggestion to use any amount of oxidizing agents, coupling substances, and reducing agents. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to formulate a composition which contains the claimed couplers, oxidizing and reducing agents in their optimum proportions because optimization of the proportions of each component would have been prima facie obvious to the skilled artisan in order to obtain the most effective color development, absent a showing otherwise.

Allowable Subject Matter

6. Claims 15, 16, 21-25, 27, 28, and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Grollier et al. does not teach a composition with monomeric residues chosen from formula (II) as claimed wherein R_3 is chosen from C_{12} – C_{22} alkyl groups. Moreover, the prior art does not teach double bases as an oxidation base and their subsequent nitrogen-containing groups as claimed; heterocyclic bases as claimed; the amount that oxidation bases are present in the composition; the weight ratio of the quaternary polyammonium polymer to another cationic polymer; and the presence of oxidation-reduction enzymes as claimed.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann-Marie Koss whose telephone number is (703) 305-3176. The examiner can normally be reached on Mondays-Fridays 7:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 305-6078 for regular communications and (703) 872-9310 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

AMK

April 2, 2002

Lorna M. Douyon
LORNA M. DOUYON
PRIMARY EXAMINER